IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

THURSDAY, THE 19TH JULY 2007 / 28TH ASHADHA 1929

CRP.No. 1035 of 2005()

AGAINST THE ORDER DATED 24/08/2005 IN EP.1276/02 IN OS.520/2001 of PRL.MUNSIFF COURT, IRINJALAKUDA.
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REVN. PETITIONERS/JUDGMENT DEBTORS 2 & 3:
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1. FRANCIS, S/O.CHENATHUPARAMBIL THOMAN,
ALOOR DESOM, ALOOR VILLAGE.

2. AUGUSTIN, S/O.KOOLA LONAPPAN,
POTTA DESOM, PERAMBRA VILLAGE,
THRISSUR DISTRICT.

BY ADV. SRI.T.N.MANOJ

RESPONDENTS: DECREE HOLDER

CENTRAL KERALA KURIES (P) LTD.,
ALOOR.

BY ADV. SRI.RENJITH THAMPAN
SMT.P.A.ANITHA

THIS CIVIL REVISION PETITION HAVING BEEN FINALLY HEARD ON 19/07/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

ORDER ON I.A. 2429 OF 2006
IN
C.R.P. NO.1035 OF 2005

DISMISSED

19/7/07 **SD/- M.N. KRISHNAN, JUDGE.**

[True Copy]

P.A. TO JUDGE.

M.N. KRISHNAN, J.

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C.R.P. NO. 1035 OF 2005

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Dated this the 19th day of July, 2007.

O R D E R

This revision petition is preferred against the order of the learned Munsiff Irinjalakuda in E.P.1276/02 whereby he has issued warrant of arrest of respondents 2 and 3 in E.P. for detention in the civil prison. The decree holder obtained a decree for recovery of money. It is submitted that the first respondent is a lady who cannot be arrested.

2. Now, as far as the 2nd respondent is concerned it is submitted that he was an employee of the Canara Bank and that he was having 16 cents of land and therefore there are means for him to discharge the decree debt. As far as the 3rd respondent is concerned it is submitted he was an employee of the Apollo Tyres and he is having sufficient income to discharge the decree debt. The learned counsel for the revision petitioner contends before me that he had produced documents in the form of B1 to B3 to establish that 2nd respondent in the E.P. was removed from the service of

Canara Bank and that he had sold the property much prior to the decree in 1999 and so he was not having any means to pay off the decree debt.

3. So far as the 3rd respondent is concerned it is submitted that though he was working in the Apollo Tyres he met with an accident thereby he was demoted and further on account of the incapability he had opted out and had voluntarily retired from the Company and thereby he is also without any means to pay the liability.

4. On the other hand, the learned counsel for the decree holder submits before me on removal and by sale of property the 2nd respondent in the suit has obtained a substantial sum and therefore he must be having means to pay the amount. So also it is contended that in the similar fashion the 3rd respondent would have also money with him. It cannot be presumed that money is with them and direct them to be arrested in execution of the decree. It is a mandatory provision that, means has to be proved and intentional evadement of payment also has to be established.

The learned counsel for the decree holder submits that if he is given an opportunity he will adduce evidence to prove that the judgment debtor has means to pay the decree debt. I feel an opportunity can be afforded to him. But the present order cannot stand, therefore the order under challenge is set aside and the matter is remitted back to the Principal Munsiff, Irinjalakuda for fresh consideration regarding the means of judgment debtors 2 and 3, after affording equal opportunities to the decree holder as well as the judgment debtors to establish their rival contentions. Parties are directed to appear before the Court below on 21.8.2007.

The C.R.P. is disposed of accordingly.

M.N. KRISHNAN, JUDGE.

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